

Remarks

The Office Action mailed January 11, 2006 has been carefully considered. Claims 1-35; 36; 37-40; and 41-43 were pending. Claims 3, 10, 11, 16, 18-20, 23-33 and 41-43 are withdrawn from consideration. Reconsideration and allowance of Claims 1-2, 4-9, 12-15, 17, 21-22, 34-35; 36; and 37-40 are respectfully requested in view of the following remarks.

37 C.F.R. 1.75(c)

The Examiner objected to Claim 2 for failing to further limit the subject matter of the claim from which it depends, Claim 1. It is respectfully submitted that those of ordinary skill in the art will recognize “reversible” as a further limitation of a fabric. By way of example, in garment making, typically, one side of the fabric is constructed as an inner face, or a face proximal to the body, and the opposite side is constructed as an outer face, or face distal to the body. One of ordinary skill in the art would however recognize that a *reversible* fabric is a fabric constructed such that either side of the fabric may be either the inner or the outer face of the fabric.

35 U.S.C. § 112

The Examiner objected to Claims 12, 13 and 17 for failing to provide proper antecedent basis for the limitation “fiber”. It is respectfully submitted that “fiber” is inherent in the fabric of the present invention.

35 U.S.C. § 102

The Examiner rejected Claims 1-2, 5, 12-14, 22 and 34-40 as being anticipated by U.S. Patent No. 3,041,861 to Kasey (hereinafter “Kasey”). Those rejections are respectfully traversed. The Office Action recites:

Regarding the fabric being a “stretch performance” fabric, the specification does not define the meaning of the term. The term has been interpreted to include a fabric comprising synthetic or natural fibers that are capable of stretching to any degree, such as cotton or wool.

Applicant submits, however, that in light of the specification, such a broad definition is unjustified. Applicant submits that one of ordinary skill in the art would construe “stretch performance” fabric as a fabric having an elastomeric component to impart stretch.

Kasey, in contrast to Applicant’s invention, teaches a rigid construction. Kasey, for example, “knit[s] in a more open construction than is normally employed. After knitting, the fabrics will then be subjected to finishing treatments which will allow the shrinking filamentary to shrink in order to obtain the improved cover.” (Col. 3, lines 10-14).

Kasey goes on to disclose various yarns that may be shrunk, for example, “polyamide yarns” “retractable acrylonitrile polymer yarns”, “retractable polyethylene terephthalate yarns”, and “retractable regenerated cellulose yarns”. (Col. 3, lines 22-31). None of these yarns are elastic, or impart *stretch performance* to a fabric. To the contrary, they rely on rigidity after shrinking in order to obtain the Kasey’s cover. Thus, it is respectfully submitted that Kasey does not anticipate Applicant’s claimed invention.

The Examiner also rejected Claims 1-2, 5, 12-14, 22 and 35-40 as being anticipated by U.S. Patent No. 5,065,600 to Byles (hereinafter “Byles”). Those rejections are respectfully traversed.

Byles, similar to Kasey, simply fails to teach Applicant’s elastic or *stretch performance fabric*. For example, Byles discloses that:

The ground yarns 14, 16 form a base or substrate G to the fabric predominantly between the absorbent hydrophilic yarn layer A and the non-absorbent hydrophobic yarn layer N for integrating the absorbent and non-absorbent layers and for providing dimensional stability to the fabric, the walewise chain stitch construction of the ground yarns 14 restricting the walewise stretchability of the fabric while the coursewise laid-in construction of the ground yarns 16 similarly restricting the coursewise stretchability of the fabric. (Col. 7, lines 45-55)(underlining added).

Byles teaches a rigid fabric designed specifically to restrict stretchability. Thus, it is respectfully submitted that Byles does not anticipate Applicant's claimed invention.

The Examiner rejected Claims 1-2, 4-5, 12-15, 22 and 35-37 as being anticipated by U.S. Patent No. 5,542,269 to Richards (hereinafter "Richards"). Those rejections are traversed.

Richards discloses a three-bar satin-like structure. (*see for example*, col. 1, lines 42-45; col. 2, lines 40-41). It is respectfully submitted that, one skilled in the art of elastomeric warp knitting recognizes that three-bar satin structures are accomplished only by inlaying or laying-in the elastomeric yarn. Richards, as would be expected, discloses that "[e]ach of the elastic yarns 14 is inlaid in a coursewise reciprocating fashion across a respective pair of wales...." (Col. 4, lines 9-11)(underlining added). Richards' fabric has inlaid elastic yarn.

Inlaid elastic yarn causes the fabric to contract in length. Inlaid elastic yarn causes a straight line in the walewise direction, and forces the non-elastic ground yarn and satin yarn to bend to conform. For example, Richards Bar II ground yarn 12 and the Satin Yarn 10 of Bar III bend to conform to the elastic yarn. Richards uses this structure to create the satin effect of the Bright Bar III horizontal floats (10u). Such a structure, to further enhance the satin surface, is finished tight to width and very high in relaxed courses per inch, which essentially removes all width stretch down to below 10% or even to 0% stretch, leaving the only stretch properties to be in the length warp direction only and normally those stretches will be at least 100% up to 200%.

Richards does not disclose Applicant's *multi-directional stretch performance fabric*.

Richards also elaborates on various stitch patterns that could be used to achieve his disclosure. Richards recites:

The threading pattern of the elastic yarns 14 on the bottom guide bar and/or the inlay pattern of the elastic yarns may be altered to achieve greater or lesser frequency in the walewise spacing and/or a greater walewise dimension in the rib effect achieved by the elastic yarns 14. These and other variations of the specific embodiment described herein are considered to be within the conceptual scope and substance of the present invention. (Col. 4, lines 45-52).

Again, Richards makes clear that his fabric is not *multi-directional stretch performance fabric*. By removing or skipping ends of elastic yarns 14 on the bottom guide Bar I in an arranged pattern repeat in order to create different rib effects, Richards actually create flat or rigid non-width stretch yarn segments. Such structures further remove any possibility of width stretch.

Richards, therefore does not disclose Applicant's *multi-directional stretch performance fabric*, and thus, it is respectfully submitted that it also does not anticipate Applicant's invention.

The Examiner rejected Claims 1-2, 5, 12-14, 22 and 35-37 as being anticipated by U.S. Patent No. 5,619,869 to Tacy (hereinafter "Tacy"). Those rejections are respectfully traversed.

Tacy, similar to Byles and Kasey, simply fails to teach Applicant's elastic or *stretch performance fabric*. Tacy teaches a rigid fabric. Thus, it is respectfully submitted that Tacy does not anticipate Applicant's claimed invention.

The Examiner rejected Claims 1-2, 4-5, 12-15, 22 and 35-40 as being anticipated by U.S. Patent No. 5,855,124 to Donaghy *et al.* (hereinafter "Donaghy"). Those rejections are respectfully traversed.

Donaghy, similar to Richards, discloses a fabric having a satin-like surface. (*see for example*, col. 1, 50-52). Donaghy, like Richards, uses inlaid elastic yarn. See, for example, Donaghy's Abstract or description of Figure 2. In Figure 2, and its accompanying description, Donaghy discloses that "bottom (back) guide bar of the knitting machine manipulates the elastic yarns 20 fed from their respective warp beam to traverse relative to the needles 15 to inlay the elastic yarns 20 in a repeating 0-0, 4-4 pattern, as indicated at I of FIG. 2." (col. 5, lines 39-43).

Inlaid elastic yarn creates a one-direction stretch. Thus, it is respectfully submitted that Donaghy does not disclose Applicant's *multi-directional stretch performance fabric*.

35 U.S.C. § 103

The Examiner rejected Claims 4 and 15 as obvious in light of Kasey in further view of either U.S. Patent No. 4,870,839 to Odham (hereinafter "Odham") or U.S. Patent No. 4,879,169 to Zafiroglu (hereinafter "Zafiroglu"). Those rejections are respectfully traversed.

Regarding the hypothetical Kasey-Odham combination, it is respectfully submitted that the Examiner has failed to consider what the references would have suggested to those of

ordinary skill in the art. Odham is concerned with “elastic yarn, such as spandex, which may shrink”. (Col. 1, line 26). Kasey is concerned with rigid shrinkable yarns, e.g., “polyamide yarns” “retractable acrylonitrile polymer yarns”, “retractable polyethylene terephthalate yarns”, and “retractable regenerated cellulose yarns”. (Col. 3, lines 22-31).

The Examiner has failed to show motivation or suggestion for replacing Kasey’s rigid yarn with Odham’s elastic one. This is particularly important, because Kasey teaches away from using an elastic yarn.

Specifically, according to Kasey, “fabrics must be “knitted in a more open construction than is normally employed. After knitting, the fabrics will then be subjected to finishing treatments which will allow the shrinking filamentary to shrink in order to obtain the improved cover.” (Col. 3, lines 10-14)(underlining added). One having Kasey, simply would not look to Odham’s elastic thread, because Kasey requires that “fabrics must be knitted in a more open construction”, while an elastic thread results in a more constricted construction after knitting.

Regarding the hypothetical Kasey-Zafiroglu combination, again the Examiner has failed to show why one of ordinary skill in the art, at the time of Applicant’s invention, having Kasey, which discloses warp knit fabrics, would look to Zafiroglu, which discloses quilted elastic composite fabrics. Where is the teaching motivation, or suggestion to go from Kasey’s use of rigid fiber, to Zafiroglu’s use of elastic fiber?

The Examiner rejected Claims 6-9 as obvious in light of Kasey in further view of either U.S. Patent No. 4,574,397 to Dennard (hereinafter “Dennard”) or U.S. Patent No. 5,123,117 to Prendergast (hereinafter “Prendergast”). Those rejections are respectfully traversed for the reasons given above. In particular, because Kasey does not disclose the limitations of Applicant’s fabric of Claim 1, the Examiner’s hypothetical combination of Kasey-Dennard or Kasey-Prendergast fails to produce the limitations of Applicant’s Claims 6-9.

The Examiner rejected Claim 17 as obvious in light of Kasey in further view of U.S. Patent No. 5,916,273 to Hepfinger (hereinafter “Hepfinger”). That rejection is respectfully traversed for the reasons given above. In particular, because Kasey does not disclose the limitations of Applicant’s fabric of Claim 1, the Examiner’s hypothetical combination of Kasey-Hepfinger fails to produce the limitations of Applicant’s Claim 17.

The Examiner rejected Claim 21 as obvious in light of Kasey in further view of Applicant's disclosure. That rejection is traversed. It is again noted that because Kasey does not disclose the limitations of Applicant's fabric of Claim 1, the Examiner's modification of Kasey based on Applicant's specification fails to produce the limitations of Applicant's Claim 21. Further, it is respectfully submitted that one having Kasey at the time of Applicant's invention would not have Applicant's disclosure. The teaching, suggestion or motivation must come from the prior art and cannot be based on hindsight from Applicant's invention. Kasey discloses one way to warp knit fabric and achieves what Kasey intends to achieve. Other than from Applicant's invention, Applicant respectfully request to know were the motivation to alter Kasey comes from?

The Examiner rejected Claims 4 and 15 as obvious in light of Byles in further view of either U.S. Patent No. 5,222,313 to Dowdy et al. (hereinafter "Dowdy") or U.S. Patent No. 5,735,835 to Holland (hereinafter "Holland"). Those rejections are respectfully traversed for the reasons given above. In particular, because Byles does not disclose the limitations of Applicant's fabric of Claim 1, the Examiner's hypothetical combination of Byles-Dowdy or Byles-Holland fails to produce the limitations of Applicant's Claims 4 and 15. Further, Byles teaches away from the Examiner's hypothetical combination with Dowdy. As mentioned previously, Byles requires a fabric constructed to restrict stretchability in both the course and the wale directions. (Col. 7, lines 45-55)(underlining added). Dowdy discloses that spandex materials are "stretchable during use". (Col. 3, line 53). Using Dowdy's spandex, regardless of hydrophobicity, with Byles's fabric would be contradictory to the goals and disclosure of Byles.

The Examiner rejected Claims 6-9 as obvious in light of Byles in further view of either U.S. Patent No. 4,574,397 to Dennard. (hereinafter "Dennard") or U.S. Patent No. 5,123,117 to Prendergast (hereinafter "Prendergast"). Those rejections are respectfully traversed for the reasons given above. In particular, because Byles does not disclose the limitations of Applicant's fabric of Claim 1, the Examiner's hypothetical combination of Byles-Dennard or Byles-Prendergast fails to produce the limitations of Applicant's Claims 6-9.

The Examiner rejected Claim 17 as obvious in light of Byles in further view of U.S. Patent No. 5,916,273 to Hepfinger (hereinafter "Hepfinger"). As mentioned previously, Byles requires a fabric constructed to restrict stretchability in both the course and the wale directions.

(Col. 7, lines 45-55). Similarly, Hepfinger discloses a fabric “whose construction is uniquely suited to resist unwanted performance characteristics such as stretch”. (Col. 1, lines 26-27). It is respectfully submitted that no combination of Byles and Hepfinger, both of which teach away from Applicant’s invention, could ever be combined to produce Applicant’s *multi-directional stretch performance fabric*.

The Examiner rejected Claim 21 as obvious in light of Byles in further view of Applicant’s disclosure. That rejection is traversed. It is again noted that Byles does not disclose the limitations of Applicant’s fabric of Claim 1, thus the Examiner’s proposed combination of Byles and stitch evasion does not render Applicant’s invention obvious. And, it is again important to note that Byles teaches away from Applicant’s *stretch performance fabric*.

It is respectfully submitted that one having Byles at the time of Applicant’s invention would not have Applicant’s disclosure. The teaching suggestion or motivation must come from the prior art and cannot be based on hindsight from Applicant’s invention. Byles discloses one way to warp knit fabric and at the same time teaches away from Applicant’s fabric and method of making the fabric. Aside from Applicant’s invention, Applicant’s respectfully request to know were the motivation to alter Byles, against Byles’s express teaching, comes from?

The Examiner rejected Claim 34 as obvious in light of Byles. That rejection is traversed. Byles does not disclose the limitations of Applicant’s fabric of Claim 1, thus any modification Byles’s fabric weight to the weights of Applicant’s Claim 34 will similarly fail to disclose the limitations of Applicant’s invention.

The Examiner rejected Claim 17 as obvious in light of U.S. Patent No. 5,542,269 to Richards (hereinafter “Richards”) in further view of U.S. Patent No. 5,916,273 to Hepfinger (hereinafter “Hepfinger”). That rejection is traversed. As mentioned previously, Richards fails to disclose the limitations of Applicant’s Claim 1, thus any combination with Hepfinger, even if permissible, would fail to render Applicant’s Claim 17 obvious.

The Examiner rejected Claim 21 as obvious in light of Richards in further view of Applicant’s disclosure. That rejection is traversed. Again, it is noted that because Richards does not disclose the limitations of Applicant’s fabric of Claim 1, the Examiner’s modification to Richards based on Applicant’s specification fails to produce the limitations of Applicant’s Claim 21. Further, it is respectfully submitted that one having Richards at the time of Applicant’s

invention would not have Applicant's disclosure. The teaching, suggestion or motivation must come from the prior art and cannot be based on hindsight from Applicant's invention. Richards discloses ways to warp knit fabric and achieves what Richards intends to achieve. Other than from Applicant's invention, Applicant's respectfully request to know were the motivation to alter Richards comes from?

The Examiner rejected Claim 17 as obvious in light of Tacy in further view of Hepfinger. That rejection is traversed. As mentioned previously, Tacy fails to disclose the limitations of Applicant's Claim 1, thus any combination with Hepfinger, even if permissible, would fail to render Applicant's Claim 17 obvious.

The Examiner rejected Claim 21 as obvious in light of Tacy in further view of Applicant's disclosure. That rejection is traversed. Again, it is noted that because Tacy does not disclose the limitations of Applicant's fabric of Claim 1, the Examiner's modification to Tacy based on Applicant's specification fails to produce the limitations of Applicant's Claim 21. Further, it is respectfully submitted that one having Tacy at the time of Applicant's invention would not have Applicant's disclosure. The teaching, suggestion or motivation must come from the prior art and cannot be based on hindsight from Applicant's invention. Tacy discloses ways to warp knit fabric and achieves what Tacy intends to achieve. Other than from Applicant's invention, Applicant's respectfully request to know were the motivation to alter Tacy comes from?

The Examiner rejects Claims 6-9 as obvious in light of Donaghy. Those rejections are respectfully traversed for the reasons given above. In particular, because Donaghy does not disclose the limitations of Applicant's fabric of Claim 1, the Examiner's proposed modifications fail to produce the limitations of Applicant's Claims 6-9.

The Examiner rejected Claim 17 as obvious in light of Donaghy in further view of Hepfinger. That rejection is traversed. As mentioned previously, Donaghy fails to disclose the limitations of Applicant's Claim 1, thus any combination with Hepfinger, even if permissible, would fail to render Applicant's Claim 17 obvious.

The Examiner rejected Claim 21 as obvious in light of Donaghy in further view of Applicant's disclosure. That rejection is traversed. Again, it is noted that because Donaghy does not disclose the limitations of Applicant's fabric of Claim 1, the Examiner's modification to

Donaghy based on Applicant's specification fails to produce the limitations of Applicant's Claim 21. Further, it is respectfully submitted that one having Donaghy at the time of Applicant's invention would not have Applicant's disclosure. The teaching, suggestion or motivation must come from the prior art and cannot be based on hindsight from Applicant's invention. Donaghy discloses ways to warp knit fabric and achieves what Donaghy intends to achieve. Other than from Applicant's invention, Applicant's respectfully request to know were the motivation to alter Donaghy comes from?

The Applicant submits that by this amendment, he has placed the case in condition for immediate allowance and such action is respectfully requested. However, if any issue remains unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,



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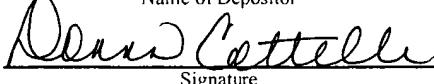
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